

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KATHRYN M. SCHWARTZ,)	Case No.: 1:09 CV 1222
)	
Plaintiff)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
THE CITY OF CONNEAUT, OHIO, <i>et al.</i> ,)	
)	
Defendants)	<u>ORDER</u>

On May 28, 2009, Plaintiff Kathryn M. Schwartz (“Plaintiff”) filed a Complaint against Defendant City of Conneaut, Ohio, City Manager Robert Schaumleffel, Jr., and Law Director Lori Lamer (collectively, “Defendants”). Plaintiff alleged that Defendants: (1) violated Plaintiff’s civil rights under the First and Fourteenth Amendments to the U.S. Constitution; (2) violated Article I, §§ 3 and 11 of the Ohio Constitution; (3) defamed her; and (4) committed abuse of public office. (Compl., ECF No. 1.) The court issued an Order Setting a Mediation Conference before Magistrate Judge Greg White to be conducted on August, 27, 2009. (ECF No. 10.) On July 22, 2009, Defendants filed their Answer (ECF No. 12) and their Motion for Partial Judgment on the Pleadings (ECF No. 13). Defendants argued that their Motion should be granted for the following reasons: (1) Count II, premised on Article I, Section 11 and Article I, Section 3 of the Ohio Constitution, fails to state a claim upon which relief can be granted because these Articles do not provide a private right of action for civil

damages; (2) Count IV, the abuse of process claim, fails to state a claim upon which relief can be granted; and (3) the City of Conneaut is immune from Count III, the defamation claim.

Plaintiff never submitted a brief in response to Defendants' Motion for Partial Judgment on the Pleadings. On August 25, 2009, Magistrate Judge White issued an Order Continuing the Mediation Conference Indefinitely and Directing Plaintiff's Counsel to Show Cause. (ECF No. 14.) This court referred the case to Magistrate Judge Greg White on September 15, 2009, for preparation of a Report and Recommendation.

Magistrate Judge White submitted his Report and Recommendation (ECF No. 16) on October 22, 2009, recommending that Defendants' Motion for Partial Judgment on the Pleadings be granted. First, he found that Count II of the Complaint failed to state a claim upon which relief can be granted. Second, he found that Count IV's abuse of process claim failed to state a claim upon which relief can be granted. However, he recognized that to the extent the Amended Complaint also raises an abuse of power claim, Ohio law does not recognize an abuse of power claim. Consequently, Plaintiff cannot state a claim for abuse of power under state law but to the extent that she is doing so under federal law, the claim would remain under Count I. Third, he found that the City is immune from Count III.

As of the date of this Order, Plaintiff has not objected to the Report and Recommendation. By failing to do so, she has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds that after *de novo* review of the Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the

record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 16.) Defendants' Motion for Partial Judgment on the Pleadings is hereby granted (ECF No. 13).

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR. _____

UNITED STATES DISTRICT JUDGE

December 7, 2009